IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Shrawan Kumar Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1201/2002)

2. Ram Pratap @ Pratap Singh Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1344/2002)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 28-8-2002 in Sessions Case No.37/2001 passed by Shri Yashpal Singh, RHJS, Additional Sessions Judge No.2, Sikar.

Date of Judgment: March 13, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. A.K.Gupta] for the appellants.
Mr. Virendra Singh]
Mr. Vaibhav Gehlot]
Mr. Harendra Singh Sinsinwar]
Mr. Kamlendra Sihag]
Mr. Rajesh Chaudhary]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Shrawan Kumar and Ram Pratap @ Pratap Singh, the appellants herein, along with seven co-accused, were put to trial before learned Additional Sessions Judge No.2 Sikar in Sessions case No.37/2001. Learned trial Judge vide judgment dated August 28, 2002 while acquitting co-accused persons convicted and sentenced the appellants as under:-

Shrawan Kumar and Ram Pratap @ Pratap Singh:
U/s.302 IPC:

Both to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer simple imprisonment for five months.

U/s.307 IPC:

Both to suffer rigorous imprisonment for ten years and fine of Rs.2000/-, in default to further suffer simple imprisonment for two months.

U/s.326 IPC:

Both to suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.324 IPC:

Both to suffer rigorous imprisonment for one year.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on October 28, 2000 Ishav Ali, ASI (Pw.15) reached SK Hospital Sikar and recorded parcha bayan of injured Ranjit Singh (Pw.2) at 10.20 AM. In the parcha bayan Ranjit Singh stated that around 6.30 AM on the said day when his sister Suman was at their field, Trilok Chand, Banwari Lal, Mahesh Kumar, Mahendra Singh, Shrawan Kumar, Ram Pratap, Birbal, Laxman Singh and others came armed to the field in a tractor and made assault on Suman. Hearing her cries, the informant, his mother and father rushed towards the place of incident but they were also given beating by the assailants. As a result of assault Suman died on the spot and the informant, his mother and father sustained injuries. Giving details of the assault the informant stated that Shrawan Kumar and Ram Pratap were armed with Gandasis and they inflicted blows on the person of Suman. Shrawan Kumar gave Gandasi blow on the left palm of the informant. The said parcha bayan was carried by Khurshid Ahmed, F.C. to the Police Station Laxmangarh where case was registered at 11.30 AM and

investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2, Sikar. Charges under sections 148, 302/149, 307/149, 326/149, 324/149 and 323/149 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 21 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have given our anxious consideration to the rival submissions and with the assistance of learned counsel we have gone through the evidence on record.

4. Death of Suman was undeniably homicidal in nature. As per post mortem report (Ex.P-16) following ante mortem injuries were found on the dead body:-

> 1. Lacerated wound 3" x ¾" x bone deep with fracture of underlying bone. Right parietal region of scalp post part.
> 2. Lacerated wound 2" x ¾" x bone deep just ant.to lateral to No.1 injury with fracture of underlying bone.
> 3. Lacerated wound 1" x ½" x bone deep forehead just above left eye brow.
> 4. Contusion 3" x 1" scalp left parietal region. On opening haematoma 6" x 4" with fracture of underlying bone.
>
> According to Dr. Richhpal Singh (Pw.12) the cause of death of was Brain Injury.

5. Informant Ranjeet Singh (Pw.2), Har Lal (Pw.5) and Smt.Jadav (Pw.4) also received incised wounds in the course of incident and their

injury reports Ex.P-1, Ex.P-2 and Ex.P-3 were also placed on record.

6. Factual situation that emerges from the material on record may be summarized thus:-

(i) Co-accused Birbal, Laxman Singh, Mahesh Kumar, Jaggu Ram, Smt. Surji, Smt.Umi Devi and Smt.Tiju Devi who were tried along with the the appellants stood acquitted despite the allegations levelled against them that they made assault on Suman.

(ii) Learned trial Judge found the appellants Ram Pratap and Shrawan Kumar guilty for their individual acts,

(iii) Injured eye witnesses viz. Ranjeet Singh (Pw.2), Har Lal (Pw.5) and Smt. Jadav (Pw.4) deposed that appellants were armed with Gandasis and they inflicted injuries with Gandasi on the person of deceased Suman but no incised wound was found on the dead body.

(iv) Learned trial Judge observed that the complainant party over implicated the accused persons in the case.

(v) The prosecution could not establish motive behind the murder of Suman.

7. Having closely scanned the evidence of Ranjeet Singh, Har Lal and Smt. Jadav we find that the charges under sections 302, 307 and 324 IPC could not be proved beyond reasonable doubt against the appellants Ram Pratap and Shrawan Kumar. There are embellishments and improvements in the testimony of alleged eye witnesses therefore we have to

separate the grain from the chaff and after doing so we find the evidence consistent in so far it relates to the alleged charges of inflicting injuries on the person of Smt. Jadav, Har Lal and Ranjeet Singh. Injuries caused by Gandasi were found on their person. Although in the evidence there are allegations that the appellants caused injuries to Suman with Gandasi, no corresponding injuries with sharp edged weapon were found on the dead body.

8. The prosecution from the testimony of Ranjeet Singh, Har Lal and Smt. Jadav have satisfied the requirements of clause (7) of Section 320 IPC and conviction of appellants Ram Pratap and Shrawan Kumar is justified.

9. For these reasons, we partly allow the appeals of appellants Shrawan Kumar and Ram Pratap @ Pratap Singh and while maintaining their conviction under section 326 IPC we acquit them of the charges under sections 324, 307 and 302 IPC. Since the appellants Shrawan Kumar and Ram Pratap @ Pratap Singh have already suffered confinement for a period of more than six years and they are in jail, they shall stand released forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

arn/